

There is no doubt that some members of this company who have all contributed towards the purchase price of this land desire, and passionately desire, to have sooner rather than later separate titles to their separate plots. To them the formation of this company, however desirable it might be as an interim measure, could not have been otherwise than a misfortune, because it is seldom that any move may now be made by any of them without at every turn consulting a lawyer or an accountant or a company secretary, none of whose services could be regarded as cheap by the peasantry. Already some of the members have come to Court thrice. Those who are privileged to be professionally engaged in this matter would be doing the community a service if they helped to expedite the achievement of the ultimate aspirations of these simple folks, for interminable legal wrangling, while giving the professionals engaged in it valuable practice in the art of company law, will only dissipate the resources of these unfortunates and may lead to breaches of the peace. I say this without in any way impugning the *bona fides* of the professional advisers who have so far been engaged in these disputes.

As regards costs, Inche' Sen submits that they should be paid by the solicitors of the persons who organised the opposition to the old directors while Inche' Maxwell submits that it would not be fair to whittle down the plaintiff company's assets by making it pay and in the circumstances the Court might be well advised to make no order or to reserve its decision on this until the other matter (Originating Summons No. 40 of 1962) connected with this suit comes up again before it. I order that costs shall be decided when I come to consider Originating Summons No. 40 of 1962 again.

Claim dismissed.

Counter-claim allowed.

Solicitors: P. T. Wong & Co.; T. K. Sen & Co.

KATCHI FATIMAH v. MOHAMED IBRAHIM

[O. C. J. (Ambrose J.) August 21, 1962]

[Singapore — Probate No. 596 of 1959]

Probate and Administration — Will — Date of execution not inserted — Wills Ordinance (Cap. 35), s.6 — Objection to distribution contrary to Muslim Law — Testator illiterate in English — Allegation of undue influence.

Muslim Law — Will — Disposition in excess of legal 1/3 — Absence of consent by heirs — Will in compliance with Wills Ordinance (Cap. 35), s.6.

In this probate action, the defendant, the eldest son of the deceased by his first wife opposed the petition for probate to the will of the deceased being granted to the plaintiff, one of the widows of the deceased. It was contended for the defendant that (1) the date of the alleged execution was not inserted in the will, (2) a Muslim cannot by will dispose of more than 1/3 of the surplus of his estate after payment of funeral expenses and debts and that testamentary dispositions in excess of the legal third cannot take effect unless the heirs consent to

A them after the death of the testator, (3) testamentary disposition by a Muslim to an heir are not valid unless the other heirs consent to the disposition after the death of the testator, (4) the testator did not know and fully appreciate and approve of the contents of the will and (5) execution of the will was obtained by undue influence.

B Held: (1) although the attesting witnesses could not remember the exact date of execution, their testimony that the will was executed by the deceased in their presence during the month of Ramadhan 1957 was sufficient;

(2) and (3) the will was entitled to probate as section 6 of the Wills Ordinance had been complied with. The defendant and other children of the deceased must make a separate application to Court if they desire to vary the will to make provision for them in accordance with the school of law of Islam to which the deceased belonged;

C (4) although the deceased could not write English and could only sign his name in English, he knew the contents of the will and approved of them;

(5) there was no evidence to substantiate the allegation of undue influence.

PROBATE ACTION.

K. E. Hilborne for the plaintiff.

N. C. Goho for the defendant.

Cur. Adv. Vult.

Ambrose J.: In this probate action, the plaintiff, who is the widow of the abovenamed deceased, prays in her petition that probate of the will of the deceased may be granted to her as executrix named in his will. The defendant, who is the deceased's eldest son by his first wife, opposes the petition on six grounds, which are set out in the defence.

The first ground is that the deceased was not domiciled in Singapore at the time of his death. This was abandoned at the trial.

F The second ground is that the date of the alleged execution has not been inserted in the will. The year of the execution is stated in the will to be 1957; but the month and the day of the month have been left blank. Ahmad bin Abdul Razak and Shaik Ali, son of Nagoor Meera, the two attesting witnesses, testified that the deceased signed the will in their presence in Shaik Ali's office at No. 4B D'Almeida Street, Singapore, in the month of Ramadhan in 1957. In that year, this month began on the first day of April and ended on the last day of the same month. Both witnesses added that the time of the execution was about 2.30 p.m. I accept their evidence. In my opinion, although they could not remember the exact date, their testimony that the will was executed by the deceased in their presence during the month of Ramadhan in 1957 is sufficient.

I It is convenient to consider the fifth and sixth grounds before the third and fourth. The fifth ground is that the testator did not know and fully appreciate and approve of the contents of the alleged will. The plaintiff testified that about two years before his death the deceased told her that he was going to make arrangements for her and her children, and that he would leave a will. She added that one day she told the deceased that his five sons by his first wife were grown up and could earn their own living, and that her children were all young and she asked

him what arrangements he was going to make for them. He replied that he had already prepared a will. Both Ahmad bin Abdul Razak and Shaik Ali testified that on the day of the execution of the will the deceased told them that he had written a will for his children. I am satisfied that, although the deceased could not write English and could only sign his name in English, he knew the contents of the will and approved of them.

The sixth ground is that the execution of the will was obtained by the undue influence of the plaintiff. The burden of proving this allegation was on the defendant. The only evidence given in support of this allegation was that whenever the defendant visited the deceased at the deceased's home at 69 Tras Street the plaintiff would stop talking to the deceased and leave the room; and that this conduct on her part aroused his suspicion. It seems to me that there is no substance in allegation of undue influence.

The third ground is that a Muslim cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts; and that testamentary dispositions in excess of the legal third cannot take effect, unless the heirs consent to them after the death of the testator. And the fourth ground is that a testamentary disposition by a Muslim to an heir is not valid unless the other heirs consent to the disposition after the death of the testator; and that any single heir may consent so as to bind his own share. Counsel for the defendant cited *Tyabji's Principles of Muhammadan Law*, 3rd edition, section 579 in support of both grounds. It is pointed out by counsel that by his will the deceased purported to give all his property to the plaintiff and her children without providing for his five children by his first wife: and that the latter have not consented to the disposition. It is contended that the will is, therefore, invalid in toto.

In my view, the will is entitled to probate, as the testator executed in accordance with the requirements of section 6 of the Wills Ordinance and as he appointed the plaintiff the executrix of the will. The authority for this view is the following statement in 16 *Halsbury's Laws of England*, 3rd edition, at page 172:

"Every instrument purporting to be testamentary and executed in accordance with the formal statutory requirements is entitled to probate if it purports to dispose of property.....or contains the appointment of an executor."

I consider this to be a correct statement of the law as regards testamentary instruments entitled to probate.

It seems to me that the defendant and other children by his first wife must make a separate application to the Court if they desire the Court to vary the will of the testator to make provision for them in accordance with the school of law of Islam to which the deceased belonged.

For the above reasons I order that probate of the will of the deceased be granted to the plaintiff as executrix named in his will and that the defendant pay the plaintiff her costs of this action.

Probate granted.

Solicitors: Hilborne, Chung & Co., S. C. Goho & Co.

KEPONG PROSPECTING LTD. v. SCHMIDT

[C.A. (Thomson C.J., Hill and Good JJ.A.)
August 21, 1962]

[K.L. — F.M. Civil Appeal No. 22 of 1962]

Debtors Ordinance, 1957, s.19 — Pending proceedings — Attachment of property before judgment — Certain requirements to be fulfilled before granting order for attachment.

Practice and Procedure — Attachment — Seizure of property before judgment — Debtors Ordinance, 1957, s.19.

The respondent was a consulting engineer and the appellant company were the holders of certain mining leases in respect of deposits of iron ore. They did not work these deposits themselves but allow them to be worked on tribute by another company named Kepong Mines Ltd. and their business in practice would seem to be confined to collecting the tribute and distributing it to their shareholders after making arrangements in respect of income tax. The respondent claimed that he was entitled to receive certain payments in respect of all ore won on the appellants' land while the appellants state that various agreements under which the respondent claims are either invalid or unenforceable. On June 26, 1961 the respondent took out a summons in chambers issued *ex parte* praying that the moneys standing to the credit of the appellant company in the Oversea Union Bank and the Bank of Canton be attached as pledge or security for satisfaction of any judgment that might be made in the respondent's favour on two grounds — (a) that a petition had been presented in the Singapore Court for compulsory winding up of Kepong Mines Ltd. and a provisional liquidator had been appointed and (b) that the appellant company had been distributing the greater part of its receipts in payment of dividends and does not show that it was intended to satisfy any judgment entered against the appellant company. Hashim J. made an order attaching the bank accounts subject to a limit of \$180,000 and this order was served on the banks in question. On July 6, 1961 the appellant company took out a summons in chambers to have the order of Hashim J. set aside on the ground that they had never at any time had any intention of obstructing or delaying the execution of any judgment which may be made against them and that the respondent had no grounds whatsoever for saying that they had. The summons was adjourned into open Court and dismissed by Hashim J. On appeal by the company,

Held: (1) the respondent's application was of necessity made under section 19 of the Debtors Ordinance